

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DELBERT J. SMITH,

Plaintiff,

v.

KATHLEEN ALLISON, et al.,

Defendants.

No. 2:22-cv-0306 KJM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983 and California law.

I. Removal

On February 17, 2022, defendants Allison and California Department of Corrections and Rehabilitations (CDCR) filed a notice of removal under 28 U.S.C. § 1441(a). ECF No. 1 at 1-3. Defendants both consented to removal, and the action was removed within thirty days of service on the last-served defendant, as required under 28 U.S.C. § 1446(b). It has been more than thirty days since the notice of removal was filed and plaintiff has not sought to remand the case to state court on any grounds. See 28 U.S.C. § 1447(c) (“A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a).”). Plaintiff has therefore waived any potential defect in removal and removal appears proper. See Vasquez v. N. County Transit Dist., 292 F.3d

1 1049, 1060 n.5 (9th Cir. 2002) (failure to file timely motion to remand waived any defect based  
 2 on failure to join all defendants in notice of removal).

## 3 II. Statutory Screening of Prisoner Complaints

4 The court is required to screen complaints brought by prisoners seeking relief against “a  
 5 governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a).  
 6 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
 7 “frivolous, malicious, or fail[] to state a claim upon which relief may be granted,” or that “seek[]  
 8 monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

9 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”  
 10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
 11 Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal  
 12 theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,  
 13 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as  
 14 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a  
 15 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.  
 16 Franklin, 745 F.2d at 1227-28 (citations omitted).

17 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
 18 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
 19 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550  
 20 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
 21 “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context  
 22 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman,  
 23 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure  
 24 to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a  
 25 cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the  
 26 speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain  
 27 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally  
 28 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur

1 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
3 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting  
4 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
5 content that allows the court to draw the reasonable inference that the defendant is liable for the  
6 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this  
7 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.  
8 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the  
9 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,  
10 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

### 11 III. Complaint

12 Defendants’ notice of removal is accompanied by a copy of the original complaint—  
13 which alleged claims for relief under state law only—and plaintiff’s amendments to the  
14 complaint, which added additional defendants and putative claims under 42 U.S.C. § 1983. ECF  
15 No. 1-1 at 5-16 (original complaint), 23-40 (amendments). The complaint, as amended, alleges  
16 that defendants CDCR, Diaz, Baughman, Lefell, Kincross, Newsom, and the Doe Director of the  
17 Department of Industrial Relations were negligent and violated plaintiff’s rights under the Eighth  
18 Amendment. Id. Specifically, plaintiff alleges that Kincross and Lefell, who were responsible  
19 for building repairs, failed to make repairs to the roof, despite repeated reports from the floor  
20 officers that the roof was leaking, which led to plaintiff slipping on the wet floor during his shift  
21 as a porter and suffering permanent injuries to his left elbow, back, and spine. Id. at 10-12, 23,  
22 25. He alleges that the failure to repair the leak constituted negligence and deliberate indifference  
23 by defendants CDCR, Diaz, Baughman, Lefell, and Kincross. Id. He further alleges that his  
24 rights under the Eighth Amendment were violated when the Department of Industrial Relations  
25 denied worker’s compensation benefits and the CDCR ordered him to return to work despite still  
26 being injured. Id. at 23, 25, 27, 29.

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1 IV. Failure to State a Claim

2 A. Defendant CDCR

3 “Will[ v. Mich. Dep’t of State Police, 491 U.S. 58 (1989)] establishes that the State and  
 4 arms of the State, which have traditionally enjoyed Eleventh Amendment immunity, are not  
 5 subject to suit under § 1983 in either federal court or state court.” Howlett v. Rose, 496 U.S. 356,  
 6 365 (1990). As an arm of the State, the CDCR is therefore immune from suit under § 1983.  
 7 Furthermore, under California Government Code § 844.6, “a public entity is not liable for . . . [a]n  
 8 injury to any prisoner.” Cal. Gov’t Code § 844.6(a)(2). The definition of prisoner includes both  
 9 inmates of a prison, Cal. Gov’t Code § 844, and public entities include the state and its agencies,  
 10 Cal. Gov’t Code § 811.2. Although § 844.6 provides exceptions for the failure to provide  
 11 medical care and worker’s compensation claims, plaintiff does not allege a failure to provide  
 12 medical care and, as discussed below, his worker’s compensation claims are barred in this court.  
 13 The CDCR is therefore immune to plaintiff’s negligence claims.

14 B. Workers’ Compensation

15 The Eighth Amendment prohibits cruel and unusual “punishment.” An Eighth  
 16 Amendment claim therefore involves, by definition, the punishment that is inflicted on a person  
 17 convicted and incarcerated by the state. See Austin v. United States, 509 U.S. 602, 609-10  
 18 (1993); Wright v. Riveland, 219 F.3d 905 (9th Cir. 2000). This punishment includes the  
 19 conditions of confinement, but the denial of worker’s compensation benefits by an extra-  
 20 correctional entity cannot be construed as “cruel and unusual punishment” within the meaning of  
 21 the Constitution because it is not part of the carceral punishment. Because workers’  
 22 compensation is not a condition of plaintiff’s confinement in prison, its denial cannot possibly  
 23 violate any right guaranteed by the Eighth Amendment.

24 Furthermore, California’s Workers’ Compensation Act grants the Workers’ Compensation  
 25 Appeals Board exclusive authority to hear claims “[f]or the recovery of [workers’] compensation,  
 26 or concerning any right or liability arising out of or incidental thereto.” Cal. Labor Code  
 27 § 5300(a); see also U.S. Fid. & Guar. Co. v. Lee Invs. LLC, 641 F.3d 1126, 1134 (9th Cir. 2011).  
 28 The statute establishes “exclusive jurisdiction within the workers’ compensation system for ‘all

disputes over coverage and payment.” Mitchell v. Scott Wetzel Servs., Inc., 227 Cal. App. 3d 1474, 1480 (1991) (quoting Marsh v. McLennan, Inc., 49 Cal 3d 1, 7-8 (1989)). For this reason, other district courts in California have refused to entertain claims involving worker’s compensation benefits, brought by inmate workers who have been injured in prison. See, Rodriguez v. State Comp. Ins. Fund, No. 05-cv-2600 LKK GGH, 2006 WL 8458934, at \*3, 2006 U.S. Dist. LEXIS 108762, at \*6 (E.D. Cal. Jan. 9, 2006) (“The mere denial of workman’s compensation by the State Insurance Compensation Fund does not present a federal question.”); Ledesma v. Cal. Rehab. Ctr., No. 15-cv-2638 FMO JPR, 2016 WL 1165920, at \*3, 2016 U.S. Dist. LEXIS 38971, at \*9 (C.D. Cal. Feb. 16, 2016), report and recommendation adopted, 2016 WL 1170885, 2016 U.S. Dist. LEXIS 38967 (C.D. Cal. Mar. 24, 2016); Montgomery v. Cal. Workers Comp. Appeals Bd., No. 10-cv-3076 CL, 2011 WL 2470080, at \*3, 2011 U.S. Dist. LEXIS 65812, at \*8-9 (D. Or. May 9, 2011), report and recommendation adopted, 2011 WL 2462938, 2011 U.S. Dist. LEXIS 65811, (D. Or. June 20, 2011). As the magistrate judge explained in Montgomery, “[r]egardless of the label placed on plaintiff’s claims . . . [their] gravamen . . . relate to denial of worker’s compensation benefits which plaintiff believes are due him” and thus they “are barred by the exclusive remedy provided by the California workers’ compensation system.” Id. (citations omitted). Because exclusive jurisdiction is vested in the California workers’ compensation system, this court lacks jurisdiction over plaintiff’s worker’s compensation claims.

### C. Personal Involvement

The complaint fails to identify any actions by defendants Newsom, Diaz, and Baughman. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant’s actions and the claimed deprivation, Rizzo v. Goode, 423 U.S. 362, 371, 376 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980), and plaintiff has not alleged any facts showing the necessary personal involvement by any of these defendants. Additionally, to the extent plaintiff alleges that his Eighth Amendment rights were violated because he was forced to work while injured, he does not identify which individuals ordered him

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1 to work despite being aware of his injuries and therefore fails to state a claim for relief on that  
2 ground.

### 3 D. Eighth Amendment

4 Plaintiff's allegations that defendants Kincross and Lefell failed to protect him from a  
5 dangerous condition when they failed to fix a leak in the roof, without more, fails to state a claim  
6 for violation of plaintiff's Eighth Amendment rights. See Jackson, 885 F.2d at 641 (slippery  
7 floors "do not state even an arguable claim for cruel and unusual punishment"); Brown v. Flores,  
8 No. 18-cv-1578 LHK, 2018 WL 9838120, at \*2, 2018 U.S. Dist. LEXIS 229920, at \*5-6 ("Case  
9 law is clear that a single defective condition—such as a slippery floor, a leaking roof, or a broken  
10 oven—by itself without additional conditions contributing to a threat to an inmate's safety does  
11 not create an objectively sufficient and serious condition to implicate the Eighth Amendment."  
12 (citing Osolinski v. Kane, 92 F.3d 934, 938 (9th Cir. 1996))); Collier v. Garcia, No. 17-cv-5841  
13 LHK, 2018 WL 659014, at \*2, 2018 U.S. Dist. LEXIS 16909, at \*3 (collecting cases) ("Claims  
14 regarding slippery floors, without more, 'do not state even an arguable claim for cruel and  
15 unusual punishment.'" (quoting Jackson, 885 F.2d at 641)) (N.D. Cal. Jan. 31, 2018).<sup>1</sup>

### 16 E. Negligence

17 For purposes of screening only, it appears that plaintiff's allegations support a claim for  
18 negligence under California law. However the court will not exercise supplemental jurisdiction  
19 over such claims unless plaintiff has also stated a cognizable claim for relief under federal law.  
20 See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 & n.7 (1988) (when federal claims are  
21 eliminated before trial, district courts should usually decline to exercise supplemental  
22 jurisdiction).

### 23 V. Leave to Amend

24 For the reasons set forth above, the court finds that the complaint does not state any  
25 cognizable federal claims and that it should not exercise jurisdiction over plaintiff's state law

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26 <sup>1</sup> But see Frost v. Agnos, 152 F.3d 1124, 1129 (9th Cir. 1998) ("[s]lippery floors without  
27 protective measures could create a sufficient danger to warrant relief" where defendants were  
28 aware that the plaintiff was on crutches and had fallen and injured himself several times on  
slippery shower floors).

1 claims unless he has also stated a cognizable claim under federal law. Because it appears that  
2 plaintiff may be able to amend the complaint to state cognizable federal claims, he will be given  
3 an opportunity to amend the complaint if he desires. Plaintiff may also choose to voluntarily  
4 dismiss all claims under federal law. If plaintiff chooses to voluntarily dismiss all of his federal  
5 law claims, it will be recommended that this case be remanded back to the Sacramento County  
6 Superior Court. Plaintiff is advised that in the event he files an amended complaint, if the court  
7 determines that he has not stated any viable claims under federal law, it will be recommended that  
8 his state law claims be remanded back to the Sacramento County Superior Court.

9 Plaintiff will be required to complete and return the attached notice advising the court how  
10 he wishes to proceed. If plaintiff chooses to amend the complaint, he will be given thirty days to  
11 file an amended complaint. If plaintiff chooses to voluntarily dismiss all federal claims, it will be  
12 recommended that this case be remanded to the Sacramento County Superior Court.

13 If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions  
14 about which he complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode,  
15 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how each named  
16 defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981).  
17 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or  
18 connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy,  
19 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official  
20 participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266,  
21 268 (9th Cir. 1982) (citations omitted).

22 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make  
23 his amended complaint complete. Local Rule 220 requires that an amended complaint be  
24 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
25 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
26 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th  
27 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled  
28 in subsequent amended complaint to preserve appeal). Once plaintiff files an amended complaint,

1 the original complaint and amendment no longer serve any function in the case. Therefore, in an  
2 amended complaint, as in an original complaint, each claim and the involvement of each  
3 defendant must be sufficiently alleged.

4 VI. Motion for Summary Judgment

5 Plaintiff has filed a document styled as a motion for summary judgment that is in fact a  
6 request for default judgment. ECF No. 7. The motion states that defendant Allison was served  
7 with the complaint on January 19, 2022, and failed to respond to the complaint within thirty days.  
8 Id. at 2-3. Because plaintiff is a prisoner proceeding pro se, his complaint is subject to screening  
9 under 28 U.S.C. § 1915A(a) and defendants have no obligation to respond to the complaint until  
10 it has been screened and a response has been ordered by the court. The complaint had not been  
11 screened at the time plaintiff filed his motion for default judgment, and the instant screening finds  
12 that the complaint does not state a federal claim for relief and an answer is therefore not required  
13 at this time. Defendants are therefore not in default and the motion for default judgment will be  
14 denied.

15 VII. Plain Language Summary of this Order for a Pro Se Litigant

16 You have not alleged facts showing that you have a claim for relief under federal law, and  
17 the court should not consider your state law claims if you do not have any federal claims. You  
18 may amend your complaint to try to fix these problems or you may voluntarily dismiss your  
19 federal claims and it will be recommended that this case be sent back to the Sacramento County  
20 Superior Court.

21 If you choose to file an amended complaint, it must include all claims you want to bring.  
22 Once an amended complaint is filed, the court will not look at any information in the original  
23 complaint or amendment. **Any claims and information not in the amended complaint will not**  
24 **be considered.**

25 In accordance with the above, IT IS HEREBY ORDERED that:


- 26 1. Plaintiff has not stated any cognizable claims under federal law.
- 27 2. Plaintiff has the option to (1) voluntarily dismiss all federal law claims and have this  
28 case remanded to the Sacramento County Superior Court or (2) amend the complaint.



1           3. Within fourteen days of service of this order, plaintiff shall complete and return the  
2 attached form notifying the court whether he wants to voluntarily dismiss his federal law claims  
3 or file an amended complaint. If plaintiff does not return the form, the court will assume that he  
4 is choosing to amend the complaint and will proceed accordingly.

5           4. Plaintiff's motion for summary judgment (ECF No. 7) is construed as a motion for  
6 default judgment and is DENIED.

7 DATED: April 28, 2022

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9 ALLISON CLAIRE  
10 UNITED STATES MAGISTRATE JUDGE  
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PLAINTIFF'S NOTICE ON HOW TO  
PROCEED

Check one:

\_\_\_\_\_ Plaintiff wants to voluntarily dismiss all federal law claims and proceed on his state law claims only. Plaintiff understands that voluntarily dismissing his federal law claims will result in a recommendation that this action be returned to the Sacramento County Superior Court.

\_\_\_\_\_ Plaintiff wants to amend the complaint.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Delbert J. Smith  
Plaintiff pro se